

Please file.

8871 East Easter Place  
Englewood, Colorado 80112  
March 25, 1979

Mr. Cleon B. Feight, Director  
Utah State Division of Oil, Gas, and Mining  
1588 West North Temple  
Salt Lake City, Utah 84116

Dear Mr. Feight:

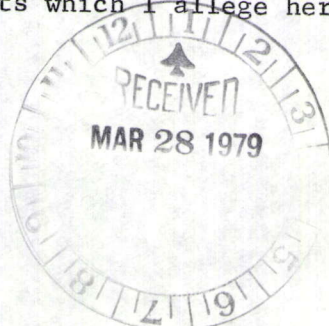
I am bringing to your personal attention a matter which I have not received adequate response to from the office of the Attorney for Natural Resources Agencies. Since, among other things, the case includes failure by the Division of Oil, Gas, and Mining to abide by applicable rules included in the Mined Land Reclamation Act, I cannot let it be dismissed as trivial. Attached are copies of all previous correspondence.

To summarize, by ignoring the fact that my father, wife, and I own the E $\frac{1}{2}$  of Section 5, T22S, R14E, in Emery County, the Colt Mesa Mining Company and Chinook Construction, Ltd. recently removed over 9,000 tons of uranium ore from the surface of our property without giving the Mathiases' prior notification nor contracting with us a surface use and damage agreement. I will emphasize here that the Mathiases recognize that we do not own the mineral rights and are not interested in preventing mining on our land, since that is a basic right of the mineral owner. We are interested, however, in receiving compensation for the facts that the above operators moved on and used our land to our own exclusion and, in the process, changed the nature and appearance of the property. I'm sure that I am not required to explain to you the proper title clearance and surface use agreement procedures for drilling for oil and gas or for mining on properties of which the surface title owner does not own the mineral rights.

I have recently approached various people employed by Chinook Construction, Ltd., including their attorney, Mr. Gerald Neilson, in Salt Lake City, who told me that Chinook thought that the mineral owner, Wayne G. Smith, of Green River, was also the surface owner since Mr. Smith had told them so (hence the name of their operation, "Smith's Fee Ground Mine"). He also said that, were the Mathiases' actually the surface owners as I claimed, we have no rights in this matter, that operations are now completed, that no damage was done, and, therefore, compensation for surface use and damage of the Mathias surface is not required of them.

I have not brought up the matter with Colt Mesa Mining Company in Hanksville.

The pertinent facts which I allege here and which can be easily verified are as follows:





Mr. Cleon B. Feight  
March 25, 1979  
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1. Either because the title to the E $\frac{1}{2}$  Sec. 5 was not checked at all or because the facts were deliberately misrepresented, the Operator's Notice of Intent states that Wayne G. Smith is the surface owner of record. Document No. 215955 in Book 72, commencing at Page 637, in the Office of the Clerk and Recorder of Emery County, Utah, at Castledale, correctly records that the Mathiases' are now and have been the surface owners since 1972, of not only the E $\frac{1}{2}$  Sec. 5 but also 1054.71 adjoining acres. It also shows that Wayne Smith sold the surface rights of this property to Luark, Inc. in the early 1960's, retaining the mineral rights. The Mathiases bought the surface rights from Luark, Inc. in 1972, with a contract of purchase.

Since the agreements between Wayne Smith, the mineral owner, and the operators are not recorded, it cannot be determined whether Wayne Smith, falsely represented as the surface owner, contracted a surface use and damage agreement with the operators in addition to his mineral royalties on the uranium ore removed from the property.

As you are aware, Section 40-8-7 (1-a) of the State of Utah Mined Land Reclamation Act states that "The board and division shall have the authority to require identification of the ownership of all interests in mineral deposits included within a notice of intent, including surface ownership of all land affected in such notice." Moreover, Section 40-8-9 (3) of the Act states that "Any person, owner, or operator who willfully or knowingly...makes or causes to be made any false entry in any report, record, account, or memorandum required by this act...or who willfully or knowingly omits or causes to be omitted from any such report, record, account or memorandum full, true, and correct entries as required by this act...shall be guilty of a misdemeanor...etc." With this in mind, Ms. Dragoo's assumption that the operator merely "overlooked" the Mathiases' surface ownership is not only inane, but hints of abysmal ignorance in matters of title clearance prior to mining operations and, indeed, of Utah law.

2. The Board of Oil, Gas, and Mining failed to mail to the Mathiases', as the owners of record, a copy of the abbreviated information contained in the Operator's Notice of Intent together with the Board's tentative decision, as is required by Section 40-8-13 (4) of the State of Utah Mined Land Reclamation Act. Therefore, the Mathiases' had no explicit method of being notified of the planned mining activity before operations began, which is apparently the intent of the rule. (Had we received your notification, this letter would not have been necessary.)

3. Section 40-8-9 (4) of the Act states that "No suit, action, or other proceeding based upon a violation of this act...shall be commenced or maintained unless such shall have been commenced within two years from date of the alleged violation". This letter serves as the Mathiases' request for action and the date falls well within two years of the date







Mr. Cleon B. Feight  
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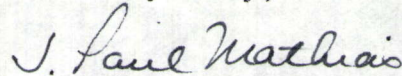
of the alleged violation, regardless of Ms. Dragoo's comment concerning "this late date".

Although the Mathiases might retain an attorney and bring suit against the operators in civil court, we do not contemplate asking for a large sum for surface use and damages and, therefore, the legal expense and associated costs involved could easily be more than our petition requests. For that reason, we respectfully request that you, as the Director of the Board, inform the operators of the points of contention made here and ask them to show cause why a full hearing should not be called by the Board to review these facts.

Ms. Dragoo's letter of March 13 states that the remedies which the Board can extend to the Mathiases in this matter are almost non-existent. Perhaps not for your information but hers, Section 40-8-8 (4) stipulates that, "if, following a hearing, the board finds a violation, it may issue an abatement or compliance order, or, at its election, bring suit in the name of the state against such person or operator in any court in the state having jurisdiction ...etc." The Mathiases prefer to avoid having to request such a suit or for that matter, even a hearing. We would hope to impress on the operators that we are the surface owners and, as such, have a valid claim.

Your response to this letter would be appreciated, Mr. Feight. I would also be thankful for any comments you may have concerning the validity of my claim, since I am frankly puzzled and somewhat disturbed that not only the operator's lawyer but also the Special Assistant Attorney for Natural Resource Agencies of the State of Utah imply that I have no claim and, therefore, no case as the surface owner. This in spite of stipulations included in 40-8-4 (16), 40-8-5 (1), 40-8-7 (1-a) and (1-e), 40-8-13 (1) and (4), 40-8-14 (4), and 40-8-17 of the Act, each of which refers to the surface owner and/or property damage claims. I am associated with an oil company which operates in Utah and, if the surface owner indeed has no rights there, I would like to keep that in mind since, in the past, we have always determined who the surface owner is and made appropriate surface use and damage agreements with him before so much as staking a well location.

Yours very truly,



J. Paul Mathias

JPM:jm  
Attach

cc: Mr. John R. Mathias  
P. O. Box 1176  
Glenwood Springs, CO 81601



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8871 East Easter Place  
Englewood Colorado 80117  
February 12, 1979

State of Utah  
Board of Oil, Gas and Mining  
1588 West North Temple  
Salt Lake City, Utah 84116

Gentlemen:

I have discovered that two mining companies moved onto my land in Emery County sometime in 1977 to mine uranium by the open pit method. Something over \$800,000 of uranium ore was hauled out. I was not contacted prior to their operations beginning and my subsequent inquiries to them have been to no avail.

Are the rights of surface title holders in strip mining operations a matter which are handled through your Board or is this case something that should be taken to a civil court? In either case, I would like to know what recourse I might have and how I should proceed.

Yours very truly,

J. Paul Mathias

SCOTT M. MATHESON  
Governor



OIL, GAS, AND MINING BOARD

GORDON E. HARMSTON  
*Executive Director,*  
NATURAL RESOURCES

STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS, AND MINING  
1588 West North Temple  
Salt Lake City, Utah 84116  
(801) 533-5771

CHARLES R. HENDERSON  
*Chairman*

CLEON B. FEIGHT  
*Director*

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EDWARD T. BECK  
E. STEELE McINTYRE

February 26, 1979

J. Paul Mathias  
8871 East Easter Place  
Englewood, Colorado 80112

Dear Mr. Mathias,

The Utah Mined Land Reclamation Act of 1975 does not require surface owner's consent prior to the commencement of uranium mining. However, that act and its implementing regulations do require the mining operator to meet certain procedural requirements prior to mining. Please contact the Division as to the name and location of the uranium operations and we will be better able to inform you as to their compliance with the Mined Land Reclamation Act.

For your information, we have enclosed a copy of the Act and its regulations. If you believe the operations have failed to comply, we may need to take further action.

Sincerely,

A handwritten signature in cursive script that reads "Denise A. Drago".

DENISE A. DRAGOO  
SPECIAL ASSISTANT  
ATTORNEY GENERAL

DAD/sp  
enc: Mined Land Reclamation Act



8871 East Easter Place  
Englewood, Colorado 80112  
March 6, 1979

Ms. Denise A. Dragoo  
State of Utah  
Department of Natural Resources  
Division of Oil, Gas, and Mining  
1588 West North Temple  
Salt Lake City, Utah 84116

Dear Ms. Dragoo:

Thank you for your February 26th reply to my inquiry of February 12 requesting clarification of my rights as a surface title owner in a surface mining situation. This letter will expound on the matter.

It is important first of all, that you realize and remember that the right of the mineral lessor to access, ingress, egress and mining operations on my land is not being challenged. Your letter implied otherwise. What is at issue is my right, as the surface owner, to require compensation for the use, to my own exclusion, of my property by the mining operator as well as my right to require adequate restoration of the land surface when mining operations are terminated. I find it difficult to believe that in mining matters, the State assumes all authority concerning surface use on private lands.

Consider the case of a homeowner with a small lot in suburban Salt Lake City who, as is always the case, does not own the mineral rights under his lot. From what I gather, present law will allow the mineral rights owner or lessor to move up the back alley any day or night of their choosing, tear down his fence, knock over his trees, destroy his garden and begin digging a shaft in the middle of the back lawn without his prior notification, council, or consent. And whenever they are completed with their work, restoration of his back yard will be done in accordance with the State, whether he agrees with it or not.

I find myself in the position of that homeowner.

The particular matter in contention is the Colt Mesa Mining Company/Chinook Construction Ltd. Smiths Fee Ground Mine, E $\frac{1}{2}$  Section 5, T22S, R14E, Emery County, Utah. My father and I purchased the surface of E $\frac{1}{2}$  Section 5 together with 1054.71 adjoining acres from Wilbur Luark in 1972. Mr. Luark had previously sold the mineral rights to Mr. Wayne Smith of Green River, Utah, who still holds them. Mining operations on our property had been essentially finished when my father and I became aware of the pit, shafts, road, etc. last August (1978). That was our first knowledge of the matter. We understand that Energy Fuels purchased 532 tons of uranium ore from Colt Mesa Mining Co. and 8,554 tons from Chinook Construction, Ltd. Additional ore plus some overburden may also have been moved out.



Ms. Denise A. Dragoo  
March 6, 1979  
Page 2

In August, 1978, there was still a pit and shafts left open on our property. In mid-February, 1979 (three weeks ago), the shafts had been filled in but an equipment trailer was still left parked on our property and, of course, the topography was still considerably lower than the land we purchased.

We do not object to the fact that uranium was mined from our land. Our objection is that, for an unknown period of time, people moved on, changed, used, and left disturbed our land without so much as notifying us of the fact. I am in the oil business and deal every day with operations on lands the owners of which do not hold the oil and gas rights. We could expect a lawsuit and confiscation of our equipment (or worse) if we ever attempted to drill for petroleum (to which we lease the right) without first forming a surface use agreement. The State has nothing to do with that agreement with the surface owner. I'm amazed that you imply that the same is not true with mining operations. You may be aware that House Bill 114, now in the Rules Committee of the Utah State Legislature, would make it a misdemeanor for any person to enter private land without permission, regardless of whether or not the property is posted.

I have not thoroughly read the entire Mined Land Reclamation General Rules and Regulations which you were so kind to include with your letter but, nonetheless, was interested in learning that the Division is required to mail a copy of the approved Notice of Intention to the land owners within 30 days of its approval (Rule M-4). Neither my father nor I have yet received the approved Notice of Intention for the Smiths Fee Ground Mine. Could you please explain why that is the case.

Any further information or advice which you could provide on this situation would be sincerely appreciated, Ms. Dragoo.

Yours very truly,

J. Paul Mathias

JPM:jm

cc: Mr. John R. Mathias  
P. O. Box 1176  
Glenwood Springs, CO 81601



SCOTT M. MATHESON  
Governor

GORDON E. HARMSTON  
*Executive Director,*  
NATURAL RESOURCES

CLEON B. FEIGHT  
*Director*



STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS, AND MINING  
1588 West North Temple  
Salt Lake City, Utah 84116  
(801) 533-5771

OIL, GAS, AND MINING BOARD

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*Chairman*

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E. STEELE McINTYRE

March 13, 1979

J. Paul Mathias  
8871 East Easter Place  
Englewood, Colorado 80112

Dear Mr. Mathias:

Enclosed please find the Colt Mesa Mining/Chinook Construction Ltd. notice of intent to mine. This notice was published in May, 1978 in the Salt Lake Tribune, Deseret News and Emery County Progress Leader. Notice was also sent to Wayne Smith of Green River in that Mr. Smith was the only landowner which Colt Mesa Mining/Chinook Construction represented to the Division as being affected by the operation. Apparently the company overlooked your interest when they made such a representation.

The Division of Oil, Gas, and Mining presently holds a \$1,000.00 bond on the uranium operator which secures certain revegetation operations to which the company has committed. At one time the Division held a more substantial bond on the uranium operator, however this obligation has been reduced as Colt Mesa Mining/Chinook Construction have completed the reclamation activities required by the State.



Mr. J. Paul Mathias

March 13, 1979

Page Two

In the opinion of the Division of Oil, Gas, and Mining, the uranium operator is in compliance with reclamation requirements of the Utah Mined Land Reclamation Act. The issue of the Company's omission of notice to you and your father could be brought before the Board of Oil, Gas, and Mining if you so desire. However, the remedies which the Board could extend to you at this late date are almost non-existent. Perhaps your best recourse at this time is to pursue an action for damages against the operator, Colt Mesa Mining/Chinook Construction Ltd. Such a civil action would be brought in a court of law and not before the administrative Board of Oil, Gas, and Mining.

Sincerely,

A handwritten signature in cursive script that reads "Denise A. Dragoo". The signature is written in dark ink and is positioned above the typed name.

DENISE A. DRAGOO

SPECIAL ASSISTANT ATTORNEY GENERAL for  
NATURAL RESOURCE AGENCIES

DAD/te



# AFFIDAVIT OF PUBLICATION

STATE OF UTAH

County of Emery,

ss.

I, Robert L. Finney, on oath, say that I am  
the Publisher of The Emery County Progress,  
a weekly newspaper of general circulation, published at Castle Dale,  
State and County aforesaid, and that a certain notice, a true copy  
of which is hereto attached, was published in the full issue of  
such newspaper for One (1)  
consecutive issues, and that the first publication was on the  
13th day of April, 19 78 and that the  
last publication of such notice was in the issue of such newspaper  
dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Robert L. Finney

Subscribed and sworn to before me this

13th day of April, 19 78

Patricia J. Finney  
Notary Public.

My Commission expires My Commission Expires October 26, 1979, 19 \_\_\_\_\_

Residing at Price, Utah

Publication fee, \$ 22.60

BEFORE THE BOARD  
OF OIL, GAS,  
AND MINING  
DEPARTMENT OF  
NATURAL RESOURCES  
In and for the  
STATE OF UTAH

IN THE MATTER OF  
THE APPROVAL OF  
THE NOTICE OF IN-  
TENT AND  
RECLAMATION PLAN  
SUBMITTED BY COLT  
MESA MINING COM-  
PANY-CHINOOK  
CONSTRUCTION LTD.  
SMITHS FEE GROUND  
MINE EMERY  
COUNTY, UTAH.

ORDER TO  
SHOW CAUSE

No. ACT-015-016

Green River, Utah.

Chinook Construc

Ltd. has been given te

tative approval in com

pliance with the Mined

Land Reclamation Act of

1975 (Title 40-8), Utah

Code Annotated, 1953. The

operations essentially are

completed, open pit

mining has ceased, and

the disturbed areas have

been regraded. The

mining was almost

completed when the

operator filed the Mining

and Reclamation Plan and

it was allowed to continue

after the operator im-

mediately posted

adequate reclamation

performance surety. This

notice fulfills the

Division's obligation

under Section 40-8-13 (21)

of the Act and is required

prior to final approval and

releasing any portion of

the surety obligation of the

operator.

Any person or agency

aggrieved by this ten-

tative decision is hereby

requested to submit

written protest within 30

days of April 14, 1978, to

the Division of Oil, Gas,

and Mining, 1588 West

North Temple, Salt Lake

City, Utah 84116, setting

forth factual reasons for

his complaint, and

thereafter at a time and

place heretobe

established, appear before

the Board of Oil, Gas, and

Mining, to show cause, if

any there be, why this

plan should not be ap-

proved.

DATED this 3rd day of

April, 1978.

STATE OF UTAH

BOARD OF OIL,

GAS, AND MINING

SCHERRE WILCOX

Secretary of the Board

Published in the Emery

County Progress April 13,

1978.





SCOTT M. MATHIESON  
Governor

GORDON E. HAMMSTON  
Executive Director  
NATURAL RESOURCES

CLEON B. PEIGHT  
Director

STATE OF UTAH  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS, AND MINING  
1588 West North Temple  
Salt Lake City, Utah 84116  
(801) 533-5771

April 4, 1978

OIL, GAS, AND MINING BOARD

I. DANIEL STEWART  
Chairman

CHARLES R. HENDERSON  
JOHN L. BELL  
THADIS W. BOX  
C. RAY JUVELIN

Emery County Progress Leader  
Castle, Dale, Utah

RE: ORDER TO SHOW CAUSE  
No. ACT-015-016

Gentlemen:

Attached hereto is a copy of an Order to Show Cause/Notice of Hearing before the Board of Oil, Gas, and Mining, Department of Natural Resources, State of Utah.

It is requested that this notice be published ONCE ONLY, as soon as possible, but no later than April 14, 1978. In the event that said notice cannot be published on or before the 14th day of April, 1978, please advise this office immediately by calling 533-5771.

Upon completion of this request, please send proof of publication and statement of cost, in duplicate, to the Division of Oil, Gas, and Mining, 1588 West North Temple, Salt Lake City, Utah 84116.

Very truly yours,

DIVISION OF OIL, GAS, AND MINING

SCHEREE WILCOX  
Administrative Assistant

/sw  
Attachment